

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-02-CF-277
Faith Mountain Communications, Inc.)	
Licensee of Station WRRL(AM))	NAL/Acct. No. 200232340001
Rainelle, West Virginia)	
)	FRN 0007-2317-80
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 12, 2002

Released: November 14, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* ("Order"), we cancel the proposed monetary forfeiture in the amount of eight thousand dollars (\$8,000) issued to Faith Mountain Communications, Inc. ("Faith Mountain"), licensee of radio station WRRL(AM), Rainelle, West Virginia for failure to install Emergency Alert System ("EAS") equipment at station WRRL(AM) in apparent willful violation of Section 11.52(a) of the Commission's Rules.¹ However, we conclude that Faith Mountain willfully violated Section 11.52(a) and admonish Faith Mountain for this violation.

2. On June 19, 2002, the Commission's Columbia, Maryland Field Office ("Columbia Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL")² in the amount of eight thousand dollars (\$8,000) to Faith Mountain. Faith Mountain filed a response on August 7, 2002.³

II. BACKGROUND

3. On April 25, 2002, a Commission agent from the Columbia Office conducted an EAS inspection of station WRRL(AM). The agent observed that the station did not have EAS equipment. The

¹ 47 F.C.R. § 11.52(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232340001 (Enf. Bur., Columbia Office, released June 19, 2002).

³ A response to a Commission NAL should be filed within 30 days of the issuance of the NAL. See 47 C.F.R. § 1.80(f)(3). Faith Mountain requested, and was granted, an extension of time within which to submit its response.

general manager, Allen Whitt, informed the agent that WRRL(AM) had not had EAS equipment since the station was purchased in February, 2001.

4. On June 19, 2002, the Columbia Office issued an *NAL* to Faith Mountain for apparently failing to install EAS equipment in willful violation of Section 11.52(a) of the Rules. In its response to the *NAL*, Faith Mountain admits the violation, but also indicates that it was aware of the violation prior to the inspection and was in the process of trying to resolve the EAS problem. Faith Mountain indicates that the equipment has been installed and the EAS is working. Finally, Faith Mountain requests cancellation of the forfeiture because of its inability to pay, and provides certain financial information in support of its request.

III. DISCUSSION

5. The forfeiture amount in this case was proposed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining Faith Mountain’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

6. Section 11.52(a) of the Rules provides that, effective January 1, 1997, all broadcast stations must install and operate during their hours of operation, equipment capable of receiving and decoding, either automatically or manually, the EAS header codes, emergency messages and EOM code. On April 25, 2002, the date of the inspection, WRRL(AM) did not have EAS equipment installed, even though Faith Mountain had owned the station since February, 2001. Faith Mountain admits the violation alleged in the *NAL* occurred. Therefore, based on the evidence before us, we find that Faith Mountain failed to install EAS equipment in willful⁸ violation of Section 11.52(a) of the Rules.

7. Although Faith Mountain states that the EAS equipment has been installed and the system is working properly, the Commission has stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.⁹ However, based on the financial documentation provided by Faith Mountain, we conclude that payment of the proposed \$8,000 forfeiture

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ See *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

would impose a financial hardship on Faith Mountain. Therefore, we will cancel the proposed forfeiture. Nevertheless, we find that it is appropriate to admonish Faith Mountain for its willful violation of Section 11.52(a).

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED THAT**, pursuant to Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ the forfeiture in the amount of eight thousand dollars (\$8,000) proposed in the June 19, 2002 *NAL* issued to Faith Mountain Communications, Inc. **IS CANCELLED**.

9. **IT IS FURTHER ORDERED** that Faith Mountain **IS ADMONISHED** for failure to install EAS equipment at Station WRRL(AM) in willful violation of Section 11.52(a) of the Rules.

10. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by regular mail and Certified Mail Return Receipt Requested to Faith Mountain Communications, Inc., H.C. 61, P.O. Box 383, Danese, West Virginia, 25831.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).